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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,054	09/30/2003	H. Donald Muise JR.	25312	7760

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EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/676,054

Applicant(s)

MUISE, H. DONALD

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because (1) the second sentence within the abstract is written as a run-on sentence, (2) the last sentence is grammatically unclear and (3) in the last sentence, it is unclear how “a side panel slot formed in the second opposed side panels”, i.e. how is a single slot formed in both of the second side panels? Correction is required. See MPEP § 608.01(b).

2. The disclosure is objected to because of the following informalities: (1) On page 2, line 21 of the specification, “FIGURES 1-8” is unclear insofar as only six figures were filed. (2) On page 3, line 9, “...the all units 23...” is grammatically unclear.

Appropriate correction is required.

### ***Claim Objections***

3. Claim 9 is objected to under MPEP 608.01(m) insofar as the word “A” in line 2 has been capitalized. The present Office practice is to insist that each claim must be the object of a single sentence beginning with a capital letter and ending with a period.

### ***Claim Rejections - 35 USC § 112***

4. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 8, claim 4, line 7, claim 8, line 7 and claim 9, line 9, “the corner flap” is unclear since a plurality of corner flaps were previously set forth in the respective claim and one cannot determine which of the plurality is being referred to.

In claim 1, last line, claim 4, line 8, claim 8, line 8 and claim 9, last line, "a side panel slot formed in the second opposed side panels" is unclear with respect to how a single slot is formed in both of the second opposed side panels, i.e. it would appear from the disclosure that a slot is formed in each of the second opposed side panels, or a single slot is formed in one of the second opposed side panels.

Each of claims 3 and 11 are unclear with respect to whether the bottom stacking slot being set forth is the previous slot referred to in claims 1 and 9, respectively or whether the slot is an additional stacking slot. If the slot is an additional stacking slot, it is suggested that ---an additional stacking slot--- or ---a second bottom stacking slot--- be inserted to clarify the claims.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stumpf (fig. 2 emb) in view of any one of Evans, Buck or Osborne. Stumpf discloses all structure of the claimed container/tie sheet except formation of the corners of the trays forming the container/tie sheet with locking tabs, side panel slots and bottom panel slots. Each of Evans, Buck and Osborne teaches that it is known to make a tray with interlocking corners formed by locking tabs connected to the corner flaps which are inserted through side wall slots and engage bottom slots within the bottom wall. It would have been obvious to form the corners as interlocking corners

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within Stumpf as taught by any one of Evans, Buck or Osborne to eliminate the use of glue and allow hand set up of the tray or trays once separated.

7. Claims 4, 5 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters in view of any one of Evans, Buck or Osborne. Waters discloses all structure of the claimed container/tie sheet except formation of the corners of the trays forming the container/tie sheet with locking tabs, side panel slots and bottom panel slots. Each of Evans, Buck and Osborne teaches that it is known to make a tray with interlocking corners formed by locking tabs connected to the corner flaps which are inserted through side wall slots and engage bottom slots within the bottom wall. It would have been obvious to form the corners as interlocking corners within Waters as taught by any one of Evans, Buck or Osborne to eliminate the use of glue and allow hand set up of the tray or trays once separated.

8. Claims 1, 3, 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 4 and 7-9 in paragraph 6 above, and further in view of Earnshaw et al. Modified Stumpf does not disclose formation of bottom panel stacking slots. Earnshaw et al teaches that it is known to provide a tray with stacking slots to facilitate use of the tray as a horizontal divider. It would have been obvious to form the tray in modified Stumpf with stacking slots in the bottom wall as taught by Earnshaw et al to allow shipment of stacked trays loaded with contents.

9. Claims 1-3, 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 4, 5 and 7-10 in paragraph 7 above, and further in view of Earnshaw et al. Modified Waters does not disclose formation of bottom panel stacking slots. Earnshaw et al teaches that it is known to provide a tray with stacking slots to facilitate use of the

tray as a horizontal divider. It would have been obvious to form the tray in modified Waters with stacking slots in the bottom wall as taught by Earnshaw et al to allow shipment of stacked trays loaded with contents.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

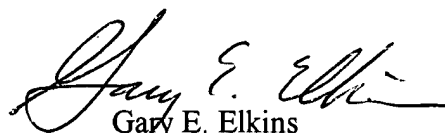
Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.

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Gary E. Elkins  
Primary Examiner  
Art Unit 3727

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27 June 2005